

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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M.G.

Appellant/Claimant

v.

C/H LC

Appellee/Employer

Case No.: ES-P-08-109656

FINAL ORDER

I. INTRODUCTION

On March 3, 2008, Claimant M.G. appealed a Claims Examiner's Determination, certified as having been served on December 27, 2007, holding Claimant ineligible for unemployment compensation benefits. At issue is whether the request for an appeal was filed within the ten day statutory time limit, providing this administrative court with subject matter jurisdiction, District of Columbia Unemployment Compensation Act, D.C. Code, 2001 Ed. § 51-111(b).

This administrative court issued a Scheduling Order and Notice of In-Person Hearing on March 18, 2008, scheduling the hearing for April 1, 2008, at 11:30 a.m. Claimant represented

herself and testified at the hearing.¹ Appellee/Employer C/H LC was represented by Richard Luchs, Esq., who appeared for the hearing with P.G. and N.D., Employer witnesses. I relied on court records admitted as exhibits 300 and 301 to determine jurisdiction.

II. FINDINGS OF FACT

The Claims Examiner's Determination was mailed to the parties on December 27, 2007. Exhibit 300. Claimant was found ineligible for benefits. The Department of Employment Services ("DOES") mailed Claimant's copy of the Determination to her attention at: ---- Wagner St., SE, Apt. -, Washington, DC 20020. Exhibit 300. This address was, at all times relevant to this determination, Claimant's current address. Using the same address, Claimant filed her appeal with this administrative court on March 3, 2008. Exhibit 301. Even though the Determination was mailed to her home address, Claimant never received the Claims Examiner's Determination in the mail.

Claimant filed for benefits on December 10, 2007. Thereafter, Claimant filed her weekly claim forms every Monday on the computer at her local DOES office. Each time Claimant filed the claims form, Claimant received a message on the computer indicating that her claim had been denied. After receiving the denial information from the computer in December 2007, Claimant spoke to someone at DOES who informed Claimant that she should file an appeal request with

¹ After receiving Claimant's sworn testimony to the facts set forth above, I ended the hearing as Claimant's behavior was disruptive and threatening throughout the proceeding. At the very outset of the case, Claimant resisted stating her name for the record, or being sworn to provide testimony regarding the timeliness of her appeal. Claimant's behavior deteriorated as the hearing progressed. I had a security guard enter the hearing room in the hope that it would prompt Claimant to mollify her disruptive, non-cooperative behaviors – it did not help. The Clerk of the Court also entered the hearing room to no avail. Finally, after repeated failed attempts to assist Claimant in gaining control over her behavior, I adjourned the hearing. At this point, Claimant made threatening gestures toward me. The Clerk of the Court had to physically interject himself between Claimant and me. Claimant finally left the hearing room under escort of two security guards and the Clerk of the Court.

this administrative court. Claimant kept filing her claim forms, but felt that her only obligation was to file a claim for benefits, and, contrary to the instructions of DOES, that Employer had the obligation to file a hearing request. Claimant did not request a hearing until March 3, 2008. Exhibit 301.

Claimant believed that a “hearing” was different from an “appeal” and that she only had to file an appeal request after a hearing was held in response to Employer’s “hearing” request. After Claimant filed her appeal document on March 3, 2008, this administrative court issued an order directing Claimant to file a copy of the DOES Determination. Claimant filed the Determination with this administrative court on March 14, 2008. Exhibit 301.

III. DISCUSSION AND CONCLUSIONS OF LAW

In accordance with D.C. Code, 2001 Ed. § 51-111(b), any party may file an appeal from a Claims Examiner’s Determination within ten calendar days after the mailing of the determination to the party’s last-known address or, in the absence of such mailing, within ten calendar days of actual delivery of the determination. The Determination in this case is certified as having been served on December 27, 2007. Therefore, Claimant had until January 7, 2008, to file an appeal request. Claimant filed her appeal document on March 3, 2008. The appeal was filed untimely and jurisdiction is not established. D.C. Code, 2001 Ed. § 51-111(b).

The issue of subject matter jurisdiction is a serious one, reflecting the legislature’s determination as to what the outer bounds of this administrative court’s authority is to hear and decide cases. This administrative court must adhere to these limits and is without authority to waive them. *Gosch v. D.C. Dep’t of Employment Servs.*, 484 A.2d 956, 957 (D.C. 1984) (holding no jurisdiction to consider an appeal where the time prescribed for filing has expired

and noting that the Supreme Court has approved even shorter time limits in the face of due process challenges). The Scheduling and Notice of In-Person Hearing Order indicated that there “are serious questions concerning the timeliness of [Claimant’s] appeal”, and that Claimant should provide any documents she “wants this administrative court to consider” regarding the timeliness of her appeal. *See* March 18, 2008, Scheduling Order. Based on the record presented, Claimant’s request for a hearing was not filed with this administrative court within ten days of service of the Claims Examiner’s Determination. *See* D.C. Code, 2001 Ed. § 51-111(b); *Gosch*, 484 A.2d at 957.

This administrative court does not have jurisdiction. The District of Columbia Court of Appeals has long held that, if proper notice has been provided, the “ten day period for ... appeals under the Unemployment Compensation Act ... is jurisdictional, and failure to file within the period prescribed divests [an administrative tribunal] of jurisdiction to hear the appeal.” *Lundahl v. D.C. Dep’t of Employment Servs.*, 596 A.2d 1001 (D.C. 1991) (internal citations omitted); *Gaskins v. D.C. Unemployment Comp. Bd.*, 315 A.2d 567 (D.C. 1974) (no jurisdiction to consider an untimely appeal even where notice of claims determination was received by appellant in aftermath of death in family).

In this jurisdiction, the law presumes that a certificate of service constitutes proof of the mailing date and address, unless the certification is rebutted by reliable evidence. *D.C. Pub. Employee Relations Bd. v. D.C. Metro. Police Dep’t*, 593 A.2d 641, 643 (D.C. 1991), *citing* *Thomas v. D.C. Dep’t of Employment Servs.*, 490 A.2d 1162, 1164 (D.C. 1985). The District of Columbia Court of Appeals has found it to be a “rebuttable presumption that mail which has been correctly addressed, stamped and mailed has been received by the addressee.” *Brown v. Kone, Inc.*, 841 A.2d 331, 334 (D.C. 2004) (internal cites omitted).

The presumption of mailing to the address of record on December 27, 2007, was not rebutted in this case, as Claimant acknowledged that the address used by DOES was at the time, and still is, her current address. In addition, even though Claimant testified that she was confused by use of the terms “hearing” and “appeal,” Claimant also testified that beginning in December 2007, she was aware that her claim had been denied and that she had to file an appeal request. Hence, despite Claimant’s apparent confusion, there is no evidence here to suggest that the notice given was ambiguous in any way. *McDowell v. Southwest Distribution*, 899 A.2d 767, 768-69 (D.C. 2006).

I cannot waive appellate jurisdictional requirements. *Customers Parking, Inc. v. District of Columbia*, 562 A.2d 651, 654 (D.C. 1989). These jurisdictional requirements vindicate important legislative policies in preventing staleness and promoting repose where a matter has already been heard and decided by a lower tribunal. Since “in order to act [this][tribunal] must have jurisdiction[,]” *Slater v. Biehl*, 793 A.2d 1268, 1271 (D.C. 2002), and it does not, this appeal must be dismissed. D.C. Code, 2001 Ed. § 51-111(b). Therefore, the Claims Examiner’s Determination, dated December 27, 2007, finding Claimant ineligible for benefits remains unchanged.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 17th day of April 2008

ORDERED that Appellant/Claimant M.G.’s Request for Hearing to review the Claims Examiner’s December 27, 2007, Determination is hereby **DISMISSED** for lack of jurisdiction; it is further

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

April 17, 2008

 /SS/
Jesse P. Goode
Administrative Law Judge